

§ 401.600

of any condition or circumstance coming to their attention which may warrant such a determination.

[32 FR 14221, Oct. 13, 1967, as amended by CGD 88-111, 55 FR 17582, Apr. 25, 1990; 55 FR 19145, May 8, 1990; 61 FR 5721, Feb. 14, 1996. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

Subpart F—Procedure Governing Revocation or Suspension of Registration and Refusal To Renew Registration

§ 401.600 Right to hearing.

(a) A United States Registered Pilot, on receipt of notice from the U.S. Coast Guard that he or she has violated any regulation made pursuant to the Act, which violation the Director determines is grounds for suspension or revocation of the pilot's Certificate of Registration, shall have fifteen (15) days from the receipt of such notice in which to notify the Director that he or she elects to exercise his or her right to a hearing as to the grounds for the proposed suspension or revocation. A pilot failing to notify the Director within the prescribed period is deemed to have waived his or her right to a hearing.

(b) A United States Registered Pilot whose application was timely filed, on receipt of notice that renewal of his or her Certificate of Registration has been denied pursuant to § 401.240(c), who fails to notify the Director within fifteen (15) days of the receipt of such notice that he or she desires a hearing, is deemed to have waived his or her right to a hearing.

[29 FR 11595, Aug. 13, 1964, as amended at 32 FR 14222, Oct. 13, 1967; 61 FR 5721, Feb. 14, 1996. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998; USCG-2002-13058, 67 FR 61279, Sept. 30, 2002]

§ 401.605 Notice.

(a) The Director, upon receipt of notice that a U.S. Registered Pilot elects to exercise his rights to a hearing, shall arrange for a hearing and notify

46 CFR Ch. III (10-1-07 Edition)

the pilot of the time, date and place it is to be held.

[32 FR 14222, Oct. 13, 1967. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998]

§ 401.610 Hearing.

(a) The hearing shall be held at the time and place designated with due regard to the convenience and necessity of the parties.

(b) The hearing shall be held on the record before an Administrative Law Judge appointed as provided by section 11 of the Administrative Procedure Act (5 U.S.C. 3105). Hearings shall be conducted in accordance with sections 5, 7, and 8 of the Administrative Procedure Act, as amended (5 U.S.C. 554, 556, 557).

[32 FR 14222, Oct. 13, 1967. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998]

§ 401.615 Representation.

(a) The U.S. Registered Pilot, designated "respondent" in a suspension or revocation hearing or "applicant" in a refusal-to-renew-registration hearing, may be represented before the Administrative Law Judge by any person who is a member in good standing of the bar of the highest court of any State, Commonwealth, Territory, Possession, or the District of Columbia, upon filing with the Administrative Law Judge a written declaration that he is currently qualified and is authorized to represent the particular party in whose behalf he acts.

(b) Whenever a person acting in a representative capacity appears in person or signs a paper in practice before the Administrative Law Judge, Director, Commandant, the Administrator, or other official of the U.S. Coast Guard, his personal appearance or signature shall constitute a representation that under the provisions of this subpart and applicable law he is authorized and qualified to represent the particular person in whose behalf he acts.

(c) When any Registered Pilot is represented by an attorney at law, any notice or other written communication required or permitted to be given to or by such a U.S. Registered Pilot shall be

Coast Guard (Great Lakes Pilotage), DHS

§ 401.650

given to or by such attorney. If a U.S. Registered Pilot is represented by more than one attorney, service by or upon any one of such attorneys shall be sufficient.

[32 FR 14222, Oct. 13, 1967, as amended at 61 FR 5721, Feb. 14, 1996. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

§ 401.620 Burden of proof.

(a) In a suspension or revocation hearing, the Director shall have the burden of establishing, by substantial evidence, the grounds for a suspension or revocation of a Certificate of Registration held by a pilot, as stated in the letter addressed to such pilot notifying him of the U.S. Coast Guard intention to suspend or revoke the pilot's registration.

(b) In a refusal-to-renew-registration hearing, the Director shall have the burden of establishing the grounds for the Director's determination under § 401.240(c) to deny renewal of the Certificate of Registration.

[32 FR 14222, Oct. 13, 1967, as amended at 61 FR 5721, Feb. 14, 1996. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

§ 401.630 Appearance, testimony, and cross-examination.

(a) The U.S. Registered Pilot may appear in person or by counsel and may testify at the hearing, call witnesses in his own behalf, and cross-examine witnesses appearing in behalf of the Director.

(1) In any case in which the U.S. Registered Pilot, after being duly served with the notice of the time and place of the hearing, fails to appear at the time and place specified for the hearing, a notation to that effect shall be made in the record and the hearing may then be conducted "in absentia."

(2) The Administrative Law Judge shall also cause to be placed in the record all the facts concerning the issuance and service of the notice of hearing and the allegations against the U.S. Registered Pilot.

(b) The Director through counsel shall appear, present evidence, call witnesses, and cross-examine the wit-

nesses called on behalf of the U.S. Registered Pilot.

(c) In the discretion of the Administrative Law Judge, other witnesses may testify at the hearing.

[32 FR 14222, Oct. 13, 1967. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998]

§ 401.635 Evidence which shall be excluded.

The Administrative Law Judge presiding at the hearing shall exclude irrelevant, immaterial, or unduly repetitious evidence.

[29 FR 11595, Aug. 13, 1964. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998]

§ 401.640 Record for decision.

The transcript of testimony and oral argument at the hearing, together with any exhibits received, shall be made part of the record for decision, and the record shall be available to the respondent or applicant on payment of costs thereof.

[29 FR 11595, Aug. 13, 1964. Redesignated at 61 FR 32655, June 25, 1996, and further redesignated by USCG-1998-3976, 63 FR 35139, June 29, 1998]

§ 401.645 Administrative Law Judge's decision; exceptions thereto.

At the conclusion of the hearing, the parties may submit briefs and recommended conclusions and findings within such time as the Administrative Law Judge shall determine appropriate. The Administrative Law Judge shall thereafter issue a written initial decision in the case, which decision shall be final and binding upon the Director, except as provided in § 401.650.

[29 FR 11595, Aug. 13, 1964, as amended at 32 FR 14222, Oct. 13, 1967. Redesignated and amended at 61 FR 32655, June 25, 1996, and further redesignated and amended by USCG-1998-3976, 63 FR 35139, 35140, June 29, 1998]

§ 401.650 Review of Administrative Law Judge's initial decision.

(a) The Commandant may, on his own motion, or on the basis of a petition filed by the U.S. Registered Pilot in the proceedings or the Commandant,